

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARMEN MAIDANA,

Plaintiff,

-against-

LA ESQUINA CRIOLLA RESTAURANT INC.,
ABAD BALLINAS, as Officer and Manager and
MARIO CIVELLI, as Owner and Manager,

Defendant.

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INDEX NO. CV11-2606

**ANSWER TO THE
AMENDED COMPLAINT**

**DEFENDANTS ABAD BALLINAS (“Ballinas”) AND MARIO CIVELLI
(Civelli”)ANSWER TO AMENDED COMPLAINT**

ABAD BALLINAS and MARIO CIVELLI , (or the “defendants”), the Defendants, by their attorney, Luis F. Echeverria, as and for its Answer to the Complaint, respectfully allege:

1. Defendant denies the allegations set forth in paragraph 1 of the complaint.
2. Defendant denies the allegations set forth in paragraph 2 of the complaint.
3. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 3 of the complaint.
4. Defendant admits the allegations set forth in paragraph 4 of the complaint.
5. Defendant denies the allegations set forth in paragraph 5 of the Complaint and refers the Court to the relevant statutes for the specific terms thereof.
6. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 6 of the complaint.
7. Defendant denies the allegations set forth in paragraph 7 of the complaint.
8. Defendant denies the allegations set forth in paragraph 8 of the complaint.
9. Defendant denies the allegations set forth in paragraph 9 of the complaint.
10. Defendant denies the allegations set forth in paragraph 10 of the complaint.

11. Defendant denies the allegations set forth in paragraph 11 of the complaint.
12. Defendant denies the allegations set forth in paragraph 12 of the complaint.
13. Defendant denies the allegations set forth in paragraph 13 of the complaint.
14. Defendant denies the allegations set forth in paragraph 14 of the complaint.
15. Defendant denies the allegations set forth in paragraph 15 of the complaint.
16. Defendant denies the allegations set forth in paragraph 16 of the complaint.
17. Defendant denies the allegations set forth in paragraph 17 of the complaint.
18. Defendant denies the allegations set forth in paragraph 18 of the complaint.
19. Defendant denies the allegations set forth in paragraph 19 of the complaint.
20. Defendant denies the allegations set forth in paragraph 20 of the complaint.
21. Defendant denies the allegations set forth in paragraph 21 of the complaint.
22. Defendant denies the allegations set forth in paragraph 22 of the complaint.
23. Defendant denies the allegations set forth in paragraph 23 of the complaint.
24. Defendant denies the allegations set forth in paragraph 24 of the complaint.
25. Defendant denies the allegations set forth in paragraph 25 of the complaint.
26. Defendant denies the allegations set forth in paragraph 26 of the complaint.
27. Defendant denies the allegations set forth in paragraph 27 of the complaint.
28. Defendant denies the allegations set forth in paragraph 28 of the complaint.
29. Defendant denies the allegations set forth in paragraph 29 of the complaint.
30. Defendant denies the allegations set forth in paragraph 30 of the complaint.
31. Defendant denies the allegations set forth in paragraph 31 of the complaint.
32. Defendant denies the allegations set forth in paragraph 32 of the complaint.
33. Defendant denies the allegations set forth in paragraph 33 of the complaint.
34. Defendant denies the allegations set forth in paragraph 34 of the complaint.
35. Defendant denies the allegations set forth in paragraph 35 of the complaint.
36. Defendant denies the allegations set forth in paragraph 36 of the complaint.
37. Defendant denies the allegations set forth in paragraph 37 of the complaint.

- 38. Defendant denies the allegations set forth in paragraph 38 of the complaint.
- 39. Defendant denies the allegations set forth in paragraph 39 of the complaint.
- 40. Defendant denies the allegations set forth in paragraph 40 of the complaint.
- 41. Defendant denies the allegations set forth in paragraph 41 of the complaint.
- 42. Defendant denies the allegations set forth in paragraph 42 of the complaint.
- 43. Defendant denies the allegations set forth in paragraph 43 of the complaint.
- 44. Defendant denies the allegations set forth in paragraph 44 of the complaint.
- 45. Defendant denies the allegations set forth in paragraph 45 of the complaint.
- 46. Defendant denies the allegations set forth in paragraph 46 of the complaint.
- 47. Defendant denies the allegations set forth in paragraph 47 of the complaint.
- 48. Defendant denies the allegations set forth in paragraph 48 of the complaint.
- 49. Defendant denies the allegations set forth in paragraph 49 of the complaint.
- 50. Defendant denies the allegations set forth in paragraph 50 of the complaint.
- 51. Defendant denies the allegations set forth in paragraph 51 of the complaint.
- 52. Defendant denies the allegations set forth in paragraph 52 of the complaint.
- 53. Defendant denies the allegations set forth in paragraph 53 of the complaint.
- 54. Defendant denies the allegations set forth in paragraph 54 of the complaint.
- 55. Defendant denies the allegations set forth in paragraph 55 of the complaint.
- 56. Defendant denies the allegations set forth in paragraph 56 of the complaint.
- 57. Defendant denies the allegations set forth in paragraph 57 of the complaint.
- 58. Defendant denies the allegations set forth in paragraph 58 of the complaint.
- 59. Defendant denies the allegations set forth in paragraph 59 of the complaint.

FIRST CLAIM OF RELIEF
FAIR LABOR STANDARDS ACT

60. Defendant repeats the answers in paragraphs 1 through 59 above as if fully set forth herein.

61. Defendant denies the allegations set forth in paragraph 61 of the complaint.

62. Defendant denies the allegations set forth in paragraph 62 of the complaint.

63. Defendant denies the allegations set forth in paragraph 63 of the complaint.

64. Defendant denies the allegations set forth in paragraph 64 of the complaint.

65. Defendant denies the allegations set forth in paragraph 65 of the complaint.

SECOND CLAIM OF RELIEF
FAIR LABOR STANDARTDS ACT

66. Defendant repeats the answers in paragraphs 1 through 65 above as if fully set forth herein.

67. Defendant denies the allegations set forth in paragraph 67 of the complaint.

68. Defendant denies the allegations set forth in paragraph 68 of the complaint.

69. Defendant denies the allegations set forth in paragraph 69 of the complaint.

70. Defendant denies the allegations set forth in paragraph 70 of the complaint.

71. Defendant denies the allegations set forth in paragraph 71 of the complaint.

THIRD CLAIM FOR RELIEF
NEW YORK STATE LABOR LAW

72. Defendant repeats the answers in paragraphs 1 through 71 above as if fully set forth herein.

73. Defendant denies the allegations set forth in paragraph 73 of the complaint.

74. Defendant denies the allegations set forth in paragraph 74 of the complaint.

75. Defendant denies the allegations set forth in paragraph 75 of the complaint.

FOURTH CLAIM FOR RELIEF
NEW YORK STATE LABOR LAW

76. Defendant repeats the answers in paragraphs 1 through 75 above as if fully set forth herein.

77. Defendant denies the allegations set forth in paragraph 77 of the complaint.

78. Defendant denies the allegations set forth in paragraph 78 of the complaint.

79. Defendant denies the allegations set forth in paragraph 79 of the complaint.

FIFTH CLAIM FOR RELIEF
NEW YORK STATE LAW

80. Defendant repeats the answers in paragraphs 1 through 79 above as if fully set forth herein.

81. Defendant denies the allegations set forth in paragraph 81 of the complaint.

82. Defendant denies the allegations set forth in paragraph 82 of the complaint.

83. Defendant denies the allegations set forth in paragraph 83 of the complaint.

SIXTH CLAIM FOR RELIEF

NEW YORK STATE LAW

84. Defendant repeats the answers in paragraphs 1 through 83 above as if fully set forth herein.

85. Defendant denies the allegations set forth in paragraph 85 of the complaint.

86. Defendant denies the allegations set forth in paragraph 86 of the complaint.

87. Defendant denies the allegations set forth in paragraph 87 of the complaint.

88. Defendant denies the allegations set forth in paragraph 88 of the complaint.

89. Defendant denies the allegations set forth in paragraph 89 of the complaint.

90. Defendant denies the allegations set forth in paragraph 90 of the complaint.

SEVENTH CLAIM FOR RELIEF

NEW YORK STATE LAW

91. Defendant repeats the answers in paragraphs 1 through 90 above as if fully set forth herein.

92. Defendant denies the allegations set forth in paragraph 92 of the complaint.

93. Defendant denies the allegations set forth in paragraph 93 of the complaint.

94. Defendant denies the allegations set forth in paragraph 94 of the complaint.

95. Defendant denies the allegations set forth in paragraph 95 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

79. The complaint in its entirety, and each cause of action contained therein, fail to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

80. Plaintiff is estopped from alleging the allegations in the complaint by virtue of Plaintiff's culpable conduct or unclean hands.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

81. Plaintiff's allegations in the complaint are barred in whole or in part by the applicable statute of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

82. That the plaintiff has failed to use available means to mitigate damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

84. The claim sued upon has been extinguished by payment thereof in full.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

85. Defendant currently have insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated defenses available. Accordingly, Defendant reserve the right to assert additional defenses in the event discovery indicated they are appropriate.

WHEREFORE, the defendant respectfully requests judgment dismissing the complaint, granting the costs and disbursements of this action, and for such other and further relief as to this Court may seem just and proper.

Dated: Woodside, New York
July 20, 2011

/S/ LUIS F. ECHEVERRIA
LUIS F. ECHEVERRIA

Attorney for Defendants Abad Ballinas and Mario Civilli
50-60 69th Street
Woodside, New York 11377
(718) 476-2700

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Attorney for Defendant
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Woodside, New York 11377
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